

1 Lisa T. Belenky (SBN 203225)  
Hallie E. Kutak (SBN 322407)  
2 CENTER FOR BIOLOGICAL DIVERSITY  
1212 Broadway, Suite 800  
Oakland, California 94612  
3 Telephone: (510) 844-7117  
Facsimile: (510) 844-7150  
4 lbelenky@biologicaldiversity.org  
hkutak@biologicaldiversity.org  
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6 Attorneys for Center for Biological Diversity

7 **UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT COURT OF CALIFORNIA**  
8 **WESTERN DIVISION**

9  
10 CENTER FOR BIOLOGICAL  
DIVERSITY,

11 Plaintiff,

12 v.

13 U.S. BUREAU OF LAND  
MANAGEMENT; DEB HAALAND, U.S.  
14 Secretary of Interior; JEFFERY  
CHILDERS, Acting Field Manager,  
15 Barstow Field Office, California Bureau of  
Land Management; and MICHELLE  
16 "SHELLY" LYNCH, District Manager,  
California Desert District.

17 Defendants.  
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Civ. No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

## INTRODUCTION

1  
2 1. This case challenges the failure of the U.S. Bureau of Land Management (“BLM”)  
3 to reinitiate Endangered Species Act (“ESA”) section 7 consultation with the U.S. Fish and  
4 Wildlife Service (“FWS”) regarding recreational use at Borehole Spring, where overuse has had  
5 catastrophic impacts on the Amargosa vole and its designated critical habitat.

6 2. The Amargosa vole is one of the most narrowly distributed subspecies of  
7 mammals in the world, with only a few hundred individuals left in the wild. Recent estimates  
8 show that approximately one square kilometer of patchy habitat for this species remains, making  
9 this species extremely vulnerable to human encroachment and other threats. The Amargosa vole  
10 is protected as “endangered” under the ESA.

11 3. The Amargosa vole’s remaining suitable habitat is primarily located in and around  
12 Borehole Spring, a perennial hot water source, in the Mojave Desert on public lands managed by  
13 BLM. Far from the little-known desert stop over it had been, Borehole Spring in recent years has  
14 become a trendy hot springs destination. Overnight camping has become common, and tour  
15 buses have been observed bringing large numbers of people to the site.

16 4. Recent studies have concluded that the Amargosa vole has an 85 percent chance of  
17 going extinct by 2026 if intensive management of impacts is not implemented. The root of the  
18 problem is increased recreational use—both at Borehole Spring and in the town of Tecopa Hot  
19 Springs—which has fragmented, degraded, and destroyed the voles’ critical habitat.

20 5. For nearly two decades, BLM’s management of Borehole Spring has consisted  
21 primarily of two signs – one forbidding overnight camping and a second reminding visitors to  
22 pick up their trash. There are no sanitary facilities at the site.

23 6. The ESA requires that consultation be reinitiated in certain circumstances,  
24 including when new information reveals effects of an action on listed species or critical habitat  
25 that were not previously considered. This process exists to ensure that BLM’s actions—  
26 including its management of recreational use of public lands—are not likely to jeopardize the  
27 survival and recovery of listed species or destroy or adversely modify designated critical habitat.  
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1 both located in this District, in San Bernardino County and Riverside County, respectively.  
2 BLM's decisions regarding the management of Amargosa vole and its critical habitat are made  
3 in these offices and so "a substantial part of the events or omissions giving rise to the claim  
4 occurred" in this District.

## 5 **PARTIES**

6 12. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the "Center") is a non-  
7 profit 501(c)(3) conservation organization incorporated in the State of California with offices  
8 across the country, including in Washington D.C., Arizona, California, Florida, New York,  
9 North Carolina, Oregon, and Washington, and in Baja California Sur, Mexico. The Center works  
10 through science and environmental law to advocate for the protection of endangered, threatened,  
11 and rare species and their habitats both in the United States and abroad. The Center has over  
12 81,800 active members, including members who reside in and travel to areas where Amargosa  
13 voles are found. The Center and its members are concerned with the conservation of imperiled  
14 species, including the Amargosa vole, management of public lands, and the effective  
15 implementation of the ESA.

16 13. The Center brings this action on behalf of itself and its members, many of whom  
17 enjoy observing and appreciating the Amargosa vole and other species in their natural habitat in  
18 the Amargosa River and Borehole Spring specifically. The Center's members regularly engage  
19 in these activities and will continue to do so in the future.

20 14. For example, one of Plaintiff's members has a scientific, educational, and aesthetic  
21 interest in the Amargosa vole, has attempted to observe the vole and its habitat on many  
22 occasions and intends to do so in the future. This member lives along the Amargosa River, and  
23 frequently visits Borehole Marsh, outside of Tecopa Hot Springs, in Inyo County, California.  
24 This member lives 7 miles away from Borehole Marsh, visits it at least weekly and has concrete  
25 plans to continue frequent visits to Borehole Marsh to view Amargosa vole habitat throughout  
26 the remainder of 2022 and into 2023. Moreover, this member has engaged and will continue to  
27 engage in volunteer work to support Amargosa vole conservation. Other members also have  
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1 scientific and educational interests in the survival of this imperiled species and have visited the  
2 Borehole Spring area to attempt to observe the Amargosa vole and to see its habitat and also  
3 intend to return in the near future, in the Spring of 2023.

4 15. Plaintiff and its members are harmed by BLM's failure to reinitiate consultation  
5 with FWS. This failure harms Amargosa voles that depend on the health of the ecosystem of the  
6 Borehole Spring, thereby decreasing Plaintiff's members' opportunities to observe and enjoy the  
7 voles in their natural habitat.

8 16. An order from this Court declaring that BLM is in violation of the ESA and its  
9 implementing regulations, and directing BLM to reinitiate consultation with FWS, will remedy  
10 Plaintiff's injuries. The ESA consultation process will ensure that BLM's actions and the  
11 activities it authorizes do not jeopardize the Amargosa vole or destroy or adversely modify its  
12 critical habitat. The result will ensure that there is better management and protection of the  
13 Amargosa vole and its critical habitat in the Borehole Spring where Plaintiff's members observe  
14 and enjoy these species.

15 17. Defendant BLM manages more land than any other federal agency in the United  
16 States. The BLM's mission, which is defined by the Federal Land Policy and Management Act  
17 of 1976, directs the agency to manage public lands generally for multiple uses while conserving  
18 natural, historical, and cultural resources, and the statute specifically directs BLM to manage  
19 public lands within the California Desert Conservation Area ("CDCA") "to protect the scenic,  
20 scientific, and environmental values of the public lands of the California Desert Conservation  
21 Area against undue impairment, and to assure against pollution of the streams and waters within  
22 the California Desert Conservation Area." 43 U.S.C. § 1781(f). The ESA requires that BLM  
23 consult with the FWS regarding the impacts of the activities it authorizes on these public lands  
24 on listed species and designated critical habitats, including the Amargosa vole and its critical  
25 habitat at Borehole Spring, and, through consultation, to ensure that its actions and inactions in  
26 managing these public lands land do not jeopardize the survival and recovery of that ESA-listed  
27 species or destroy or adversely modify its critical habitat.



1 acres of critical habitat was designated, spanning much of the wetland area surrounding and  
2 including the town of Tecopa Hot Springs. The threats cited in the listing decision include  
3 reductions and modifications to the vole's marsh habitat resulting from human encroachment.  
4 The listing decision also notes that such habitat destruction had already resulted in the extinction  
5 of the Tecopa pupfish (47 Fed. Reg. 2317 (Jan. 15, 1982)), the first species to be removed from  
6 protections under the Endangered Species Act due to extinction.

7 23. Voles need permanent water sources for survival, making them especially  
8 vulnerable to drought and climate. Three-square bulrush—the vole's sole food source—only  
9 grows where water comes to the surface. During the 2012-2015 drought, bulrush habitat  
10 declined by 37 percent. Ongoing groundwater overdraft threatens the groundwater flow that  
11 sustains the Amargosa River and the springs in Tecopa. Spring diversion from the town of  
12 Tecopa Hot Springs further compounds the harm to vole habitat, as recognized by FWS in its  
13 2002 Biological Opinion.

14 24. Water-related threats from drought, groundwater pumping, and spring diversion  
15 pose an existential threat to the species, making it even more important to reduce other threats to  
16 the vole from direct human use of their habitat. Conservation of the remaining vole populations  
17 and habitat is essential to their survival.

18 25. Small, isolated patches of habitat are more likely to accelerate local extinction.  
19 Voles will move to nearby patches if there is a vegetated, protective corridor but will not travel  
20 exposed routes. Genetic research conducted in 2002 revealed that the species has low genetic  
21 diversity, which further confirms that water consistency, habitat connectivity, and habitat quality  
22 are the highest priorities for vole survival.

23 26. One of the most tangible ways to prevent the extinction of the Amargosa vole is to  
24 create and sustain “megamarshes”: interconnected suitable habitat patches of sufficient size to  
25 function as a source population from which voles can disperse. Megamarshes allow voles to  
26 create runways in the vegetation that allow them to move about their habitat, encouraging  
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1 genetic diversity. Generally, these few robust marshes support source populations, which then  
2 disperse into neighboring marshes.

3 27. The creation and enhancement of megamarshes through habitat restoration and  
4 water management links separated marsh patches, increases connectivity and total habitat, and  
5 allows for free movement of voles among subpopulations, all of which decrease the likelihood  
6 of subpopulation extinction.

7 28. The Borehole Marsh boasts the most robust vole population. BLM has identified  
8 Borehole Marsh as the voles' "main habitat."

9 29. The water that year-round sustains Borehole Marsh comes from Borehole Spring.  
10 Borehole Spring began as an artificial water source, which was drilled in 1976 by the Stauffer  
11 Chemical Company for mineral exploration. The drillers hit hot water at 350 feet, and the flow  
12 continues to this day, despite numerous efforts to plug the hole. The spring continuously  
13 discharges hot water in a pool approximately 10 meters wide, which then flows down a channel  
14 approximately 200 meters long through dense bulrush marsh. The water reaches Tecopa Hot  
15 Springs Road, wherein a large portion of it pools back toward the source, creating a dense  
16 bulrush wetland. Remaining water then passes underneath Tecopa Hot Springs Road through a  
17 culvert and creates another wetland, along with other downstream marshes and pools. FWS has  
18 noted that the consistent water discharge from Borehole Spring ensures the necessary conditions  
19 for robust vole habitat.

20 30. The health of the entire Amargosa vole population parallels the health of Borehole  
21 Marsh. In 2009, culvert work on Tecopa Hot Springs Road caused a significant reduction in the  
22 water level near Borehole Spring, which mostly drained Borehole Marsh. By 2014, up to 90  
23 percent of marsh vegetation had been lost, and from 2012 to 2015, population density of voles  
24 near Borehole Spring decreased by 80 percent. The Borehole Marsh was in catastrophic decline,  
25 and as a result, the vole was on the knife edge of extinction, with only 50-75 individuals left in  
26 the wild. Even with this dwindling habitat, 85 to 90 percent of the vole population nevertheless  
27 was estimated to still occur there.



1           31. In response, in 2013 the ad hoc Amargosa Vole Recovery Team was formed. The  
2 team is comprised of private landowners along with federal, state, non-profit, and academic  
3 institutions, including FWS, BLM, U.S. Geological Survey, California Department of Fish and  
4 Wildlife, Amargosa Conservancy, UC Davis, UC Berkeley, Purdue University, and Inyo County  
5 Road Department, with the common goal of saving the vole and recovering its populations.  
6 Starting in 2013, the ad hoc Amargosa Vole Recovery Team completed several management  
7 actions to benefit the Amargosa vole, including stabilizing the habitat at Borehole Marsh.

8           32. Due to the Recovery Team's restoration efforts, by 2017, bulrush density and  
9 cover increased by 500 percent compared to pre-restoration levels. Now, post-restoration, the  
10 marsh complex is thought to be the "most dependable and sustainable patch" of Amargosa vole  
11 habitat in the world, serving as a source population for voles colonizing other marshes.

12           33. The Amargosa Vole Recovery Team's restoration efforts lay bare that the  
13 continued viability of Borehole Marsh is critical to the vole's survival.

#### 14                           **BLM Management of Amargosa Vole Habitat**

15           34. Management of BLM lands in the Amargosa vole's habitat must conform to the  
16 CDCA Plan, which includes the specific management requirements laid out in the Northern and  
17 Eastern Mojave ("NEMO") bioregional plan amendments and the Desert Renewable Energy  
18 Conservation Plan ("DRECP") amendments. BLM last updated the NEMO amendments in 2002  
19 and adopted the DRECP in 2016.

20           35. The Amargosa vole's entire habitat is in lands designated as "California Desert  
21 National Conservation Land" and an "Area of Critical Environmental Concern" (ACEC). The  
22 CDCA refers to the designated lands that include Borehole Marsh as the "Amargosa South" unit  
23 (attached as Exhibit B).

24           36. The "overarching goals" for this unit are to "protect biological values, including  
25 habitat quality, populations of sensitive species, climate refugia and landscape connectivity"  
26 while providing for "compatible uses." Among the nationally significant ecological values of the  
27 Amargosa South unit are the "permanent flowing water and wetlands" that serve as a "magnet  
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1 for a diversity of plant and wildlife species, including many special status species.” Exhibit B at  
2 249. The nationally significant scientific values of the Amargosa South unit identify the need for  
3 BLM to conduct a long-term demographic/habitat assessment for the Amargosa vole.

4 37. The DRECP directs BLM to undergo clear and specific management actions to  
5 protect these identified nationally significant values. These include clear and specific  
6 management actions for maintaining water flow in the Amargosa South unit, such as securing  
7 water rights to conserve existing water sources, monitoring surface water quality, and  
8 monitoring the uses of water stemming from BLM-authorized activities. Exhibit B at 251. These  
9 also include actions to maintain and improve the condition of vegetation, which includes  
10 tracking changes in vegetation over time and identifying additional recovery needs and new  
11 conservation strategies to protect that vegetation. *Id.*

12 38. The DRECP also directs BLM to protect the Amargosa vole and its habitat by  
13 “preventing irreparable damage,” including monitoring and evaluating habitat trends and  
14 conditions affecting listed species on public lands. *Id.* at 253.

15 39. For recreation, the management actions are quite general. The DRECP prohibits  
16 overnight camping in the Amargosa South Unit. The sole management action is: “Post  
17 interpretive signs along highly used routes as funding is available.” *Id.* at 255. Otherwise,  
18 recreational use of Borehole Spring is not specifically mentioned in the Plan.

19 40. While the DRECP allows for multiple uses not specifically covered by the  
20 management actions, these uses are only allowed as long as they are consistent with the  
21 nationally significant values. The DRECP may be silent on recreation at Borehole Spring, but  
22 any recreation there must be consistent with the nationally significant values and management  
23 actions listed above.

24 41. For additional management direction, the BLM continues to rely on the NEMO  
25 plan, an amendment to the CDCA Plan, adopted in 2002 (attached as Exhibit C). The NEMO  
26 Plan was intended to be the mechanism to implement the U.S. Fish and Wildlife Services’ 1997  
27 Recovery Plan for the Amargosa Vole. NEMO developed “Recommended Special Management  
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1 Actions for the Recovery of the Amargosa Vole” with the objective to “to minimize the threats  
2 that imperil the Amargosa vole so that the species can be downlisted to ‘Threatened’ status”  
3 Exhibit C at Appendix H- 1. These management actions require that BLM:

- 4 “b. Implement measures to secure extant populations and non-occupied habitat;
  - 5 i. Secure water sources and water rights for groundwater and springs critical to
  - 6 maintaining and enhancing upland habitats and lowland habitats.
  - 7 ...
  - 8 v. Prevent further loss of habitat or water quality by road construction,
  - 9 maintenance, or other construction activities.
  - 10 ...
  - 11 viii. Prohibit all camping and campfires on public lands.
  - 12 c. Identify threats to the Amargosa vole and/or habitat.
  - 13 d. Develop interim management plan to protect habitats.
  - 14 e. Implement management plan.”

15 Exhibit C at Appendix H- 2.

#### 16 **Increasing and Unsustainable Recreational Use at Amargosa Vole Habitat**

17 42. Borehole Marsh, which contains critical habitat designated for the Amargosa  
18 vole’s survival, has become an increasingly popular hot springs destination, colloquially referred  
19 to as “Tecopa Natural Hot Springs” or the “Tecopa Mud Baths.”

20 43. The Los Angeles Times had an article on the cover of its travel section in 2020  
21 that gave detailed directions on how to get to Borehole Spring. The Palm Springs Desert Sun did  
22 the same in 2016. In a 2017 article, the New York Times noted that “[t]he Bureau of Land  
23 Management allows bathers to use the hot springs adjacent to the habitat of the Amargosa vole,  
24 an endangered species which numbers a few hundred.”

25 44. In 2015, an effort was made to address the issue by a local nonprofit, the  
26 Amargosa Conservancy, and local residents. An ad hoc monitoring program was begun, and  
27 user data was collected on an almost daily basis for three and a half months. This monitoring  
28 revealed near constant use of the hot springs at all times of day and into the evening.

45. Monitoring data in the spring of 2015 showed almost no times when there were no  
people at Borehole Spring, and regularly recorded 30 or more visitors at the site. On 24  
occasions, off-leash dogs were documented. Out of 109 data points collected, only three times

1 was there nobody at Borehole. More recently, from November 2021 to March 2022, out of 75  
2 data points collected, on only four occasions was nobody there.

3 46. Use of Borehole Spring is not limited to casual, occasional bathing. People  
4 frequently camp nearby. People bathe in mud from the pool's bottom, considering it to be  
5 medicinal. People bring off-leash dogs to the site. Tour buses have been documented pulling up  
6 and unloading visitors. Campers have been observed making fires and leaving them to burn.  
7 People bring all-terrain vehicles and drive them adjacent to the marsh.

8 47. The mud and water of Borehole Spring are coveted as well. Searches of  
9 photographs on the internet on October 21, 2022 reveal numerous users covering themselves  
10 with mud scooped from the bottom of the spring. Indeed, there are anecdotal reports of users  
11 harvesting and selling the mud. On one occasion, users were observed with a shop vac and a  
12 generator, filling jugs of water for resale.

13 48. Despite the thousands of users annually, there are no restrooms. The monitoring  
14 program has documented human waste deposited directly into the bulrush Amargosa vole  
15 habitat. An informal fecal coliform test on water from Borehole Spring using an Aquavial brand  
16 home testing kit showed positive results for fecal coliform when tested on January 1, 2022, and  
17 again on January 4, 2022.

18 49. Unsurprisingly, two biological field technicians with US Geological Survey who  
19 frequented the site while monitoring the Amargosa vole noted that "[a]ctivities associated with  
20 the bathers – such as trampling of the marsh and dogs hunting voles, fire and off-road vehicles –  
21 pose indirect and direct threats" to the voles.

22 50. Back in 2002, BLM authorized recreational use at Borehole Spring, non-  
23 commercial "casual use," and determined that no specific management was required. Instead,  
24 BLM's 2002 plan determined it would be sufficient to manage the area under general guidelines.

25 51. Now the circumstances have changed. There is new information about the impacts  
26 of recreational use at Borehole Spring, but BLM has failed to reinitiate consultation with FWS  
27 to ensure the BLM management does not jeopardize the Amargosa vole or destroy or adversely  
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1 modify its critical habitat. The thousands and thousands of visitors who descend on Borehole  
2 Spring each year are having significant impacts on the Amargosa vole and its critical habitat that  
3 were not anticipated in 2002; therefore, BLM is required to reinitiate consultation.

#### 4 **LEGAL BACKGROUND**

5 52. In 1973, recognizing that certain species “ha[d] been so depleted in numbers that  
6 they are in danger of or threatened with extinction,” Congress enacted the ESA, 16 U.S.C. §§  
7 1531–44, “to provide a means whereby the ecosystems upon which endangered species and  
8 threatened species depend may be conserved, [and] to provide a program for the conservation of  
9 such endangered species and threatened species.” *Id.* § 1531(a)(2), (b). Congress declared that it  
10 is “the policy of Congress that all Federal departments and agencies shall seek to conserve  
11 endangered species and threatened species and shall utilize their authorities in furtherance of the  
12 purposes of this Act.” *Id.* § 1531(c)(1).

13 53. The ESA defines conservation as “the use of all methods and procedures which  
14 are necessary to bring any endangered species or threatened species to the point at which the  
15 measures provided pursuant to [the ESA] are no longer necessary.” *Id.* § 1532(3). The ESA’s  
16 goal is not simply to prevent endangered and threatened species from becoming extinct, but to  
17 recover these species to the point where they no longer require the statute’s protections.

18 54. Considered “the most comprehensive legislation for the preservation of  
19 endangered species ever enacted by any nation,” the ESA embodies the “plain intent” of  
20 Congress to “halt and reverse the trend toward species extinction, whatever the cost.” *Tenn.*  
21 *Valley Authority v. Hill*, 437 U.S. 153, 180, 184 (1978); see also *id.* at 185 (ESA section 7’s  
22 legislative history “reveals an explicit congressional decision to require agencies to afford first  
23 priority to the declared national policy of saving endangered species” and “a conscious decision  
24 by Congress to give endangered species priority over the ‘primary missions’ of federal  
25 agencies”).

26 55. Section 7(a)(2) of the ESA imposes on federal agencies such as BLM a  
27 substantive duty to ensure that actions they authorize or carry out—including management of  
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1 public lands—are not likely to jeopardize listed species or destroy or adversely modify critical  
2 habitat designated for such species. 16 U.S.C. § 1536(a)(2). Such “action agencies” must  
3 discharge this obligation in consultation with the appropriate expert fish and wildlife agency,  
4 which for the Amargosa vole is the FWS.

5 56. Even after the procedural requirements of consultation are complete, the ultimate  
6 duty to ensure that an activity is not likely to cause jeopardy to a listed species or destroy or  
7 adversely modify critical habitat lies with the action agency.

8 57. The action agency’s ESA obligations do not end after completing an initial  
9 consultation. The ESA also requires that consultation be reinitiated in certain circumstances  
10 where “discretionary Federal involvement or control over the action has been retained or is  
11 authorized by law.” 50 C.F.R. § 402.16(a).

12 58. Where the action agency retains discretionary involvement or control over its  
13 action, it must reinitiate consultation:

14 (1) If the amount or extent of taking specified in the incidental take statement is  
15 exceeded; or

16 (2) If new information reveals effects of the action that may affect listed species or  
17 critical habitat in a manner or to an extent not previously considered.

18 50 C.F.R. § 402.16(a).

19 59. Once a federal agency initiates consultation on an action under the ESA, the  
20 agency cannot make “any irreversible or irretrievable commitment of resources with respect to  
21 the agency action which has the effect of foreclosing the formulation or implementation of any  
22 reasonable and prudent alternative measures.” 16 U.S.C. § 1536(d). Section 7(d) prohibitions  
23 remain in effect throughout the consultation period and until the federal agency has satisfied its  
24 obligations under Section 7(a)(2) that the action will not result in jeopardy to the species or  
25 adverse modification of its critical habitat.

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## PROCEDURAL HISTORY

60. With the 1976 Federal Land Policy and Management Act, Congress charged BLM with managing lands within the California Desert Conservation Area (CDCA). As part of BLM's duties, Congress directed BLM to prepare a comprehensive long-range management plan, called the California Desert Conservation Area Plan. The California Desert Conservation Area Plan as amended outlines the authorized uses of the Amargosa vole critical habitat area, including in and around Borehole Spring.

61. Over twenty years ago, BLM consulted with FWS regarding BLM's approval of the NEMO bioregional plan amendments to the CDCA Plan. This consultation included management of the Amargosa Vole and its critical habitat, including the area around Borehole Spring.

62. In 2002, FWS issued a 2002 Biological Opinion on the Amargosa vole (attached as Exhibit D), which found that the then-existing low-level of recreational use at Borehole Spring, the non-commercial "casual" use which was described and authorized under BLM's resource management plan, was not likely to jeopardize the continued existence of the Amargosa vole or destroy or adversely modify its critical habitat. Exhibit D at 29. The 2002 Biological Opinion did not specifically address the issue of recreational use of Borehole Spring. Little recreation was expected in the area, and as a result the potential impacts on the vole are largely dismissed in the 2002 Opinion:

"...we anticipate that substantial recreation does not occur within habitat of the Amargosa vole because many desert users focus their activities on Amargosa Canyon. Additionally, the dense vegetation in the wetland habitat of the Amargosa vole likely discourages some degree of recreation. For these reasons, this program guidance does not appear to pose a substantial threat to the Amargosa vole and its critical habitat."

On this basis, FWS granted BLM "an exemption from the prohibitions against take for the incidental take of Amargosa voles that may result from casual use associated with recreation."



63. In 2016 when BLM adopted the DRECP amendments to the CDCA Plan, the FWS issued a new biological opinion (attached as Exhibit E). The DRECP Biological Opinion references the 2002 Biological Opinion for the Amargosa vole but provided no new analysis of the status of the species, then-current recreation use, or provide other specific bases for its finding that BLM management was not likely to adversely affect the Amargosa vole.

64. The FWS recommendations in the 2002 opinion rest on the assumption that people did not recreate in Amargosa vole wetland habitat in any significant numbers. Neither the FWS's 2002 Biological Opinion nor the 2016 DRECP Biological Opinions considered the impacts to the vole of the level of recreational use of the wetlands that is now occurring. Although continuing low use was anticipated in 2002, twenty years later, it is clear that current use of the wetland habitat is quite high. BLM inappropriately continues to rely on the decades-old 2002 biological opinion and the 2016 biological opinion, which both failed to address these issues in BLM's management of the Amargosa vole and the vole's critical habitat around Borehole Spring.

65. The ESA requirement that consultation be reinitiated is designed for this very situation: when new information reveals effects of an action on listed species or critical habitat that were not previously considered.

66. New information shows that there is increased recreation impacting dwindling Amargosa vole critical habitat. As explained below, the BLM has failed to control impacts from recreation despite clear indications that recreation has impacted the vole and its habitat.

67. Accordingly, consultation must be reinitiated to address the impacts of BLM management that authorizes the current recreational use of this area on the Amargosa vole and its critical habitat.

68. Plaintiff Center for Biological Diversity notified BLM and the FWS of their intent to sue over BLM's failure to reinitiate consultation in violation of ESA section 7. Exhibit A. Plaintiff explained that new information shows that increased recreational use is destroying and

1 degrading the habitat upon which the vole survives and is undoing the progress of restoration  
2 efforts, jeopardizing the continued existence of the vole.

3 69. BLM did not reinitiate consultation in response to Plaintiff's notice.

4 70. By allowing and authorizing activities to proceed that are impacting survival and  
5 recovery of the Amargosa vole and destroying or adversely modifying critical habitat, prior to  
6 the reinitiation and completion of consultation with FWS, BLM is failing to protect the  
7 Amargosa vole from jeopardy.

8 **CLAIM FOR RELIEF**

9 **(Violation of ESA: Failure to Reinitiate Consultation with FWS)**

10 71. Plaintiff hereby realleges, as if fully set forth herein, each and every allegation  
11 contained in paragraphs 1 through 70.

12 72. Section 7(a)(2) of the ESA imposes a substantive duty on BLM to ensure that  
13 actions it authorizes or carries out—including management of public lands—are not likely to  
14 jeopardize listed species or destroy or adversely modify critical habitat designated for such  
15 species. 16 U.S.C. § 1536(a)(2). BLM is required to reinitiate consultation with FWS on a given  
16 action when “new information reveals effects of the action that may affect listed species or  
17 critical habitat in a manner or to an extent not previously considered.” 50 C.F.R. § 402.16(a)(2).

18 73. New information reveals that increased recreational use authorized by BLM at  
19 Borehole Spring is having effects on the Amargosa vole and its designated critical habitat that  
20 were not previously considered. For example, new information shows that large numbers of  
21 people are visiting Borehole Spring to bathe in the waters, and some trample the banks, remove  
22 the bottom mud layer, bring unleashed dogs that may predate the vole, and relieve themselves in  
23 the absence of available sanitary facilities. Some people are also driving vehicles in the fragile  
24 marsh area. Collectively, these activities imperil the most viable critical habitat remaining for  
25 the Amargosa vole.

74. BLM has failed to ensure that the activities authorized under the existing Plan are not likely to jeopardize the continued existence of the Amargosa vole and prevent destruction and adverse modification of its designated critical habitat.

75. By failing and refusing to reinitiate consultation with FWS on the impacts of increased recreational use on Amargosa voles, BLM is in violation of the ESA and its implementing regulations. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(a)(2).

## REQUEST FOR RELIEF

Therefore, Plaintiff respectfully requests that this Court:

1. Declare that BLM is in violation of the ESA for failing to reinitiate consultation with FWS on the effects of authorized activities, including recreational use at Borehole Spring, on the Amargosa Vole and its critical habitat;

2. Order BLM to reinitiate consultation with FWS to ensure that BLM does not authorize activities that jeopardize the Amargosa vole or destroy or adversely modify its critical habitat, including activities at Borehole Spring that irreversibly and irretrievably commit resources and foreclose the formulation or implementation of reasonable and prudent alternatives, prior to completing the re-initiated consultation regarding the impacts of authorized activities on the Amargosa vole;

3. Award Plaintiffs their reasonable costs, fees, and expenses, including attorney's fees, associated with this litigation; and

4. Grant Plaintiffs such further relief as the Court may deem just and proper.

Respectfully submitted this 6th day of December, 2022.

1 DATED: December 6, 2022



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3 Hallie E. Kutak (SBN 322407)  
4 Lisa T. Belenky (SBN 203225)  
5 CENTER FOR BIOLOGICAL DIVERSITY  
6 1212 Broadway, Suite 800  
7 Oakland, California 94612  
8 Telephone: (510) 844-7117  
9 Facsimile: (510) 844-7150  
10 lbelenky@biologicaldiversity.org  
11 hkutak@biologicaldiversity.org

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*Attorneys for Center for Biological Diversity*